IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.609 OF 2004
IN
NOTICE OF MOTION NO.2582 OF 2002
IN
SUIT NO.162 OF 2002

Apple Finance Limited .. Appellant.

V/s.

Canara Bank .. Respondent.

Ms.S. Srikrishna i/b. Kanga & Co. for the appellant.

Mr.Janak Dwarkadas, Senior counsel with Ms.Mona Bhide, Mr.Sharon Jangiani and Ms.Preeti Jain i/b. Dave & Girish & Cop. for the respondent.

Mr.D.R. Dhurat, 1st Asstt. to the Court Receiver present.

CORAM : R.M. LODHA, &
J.P. DEVADHAR, JJ.

DATED : 26TH OCTOBER, 2004.

P.C. :

Ms.S. Srikrishna, Advocate appears for the appellant and submits that the appellant is desirous of prosecuting the appeal. We heard the appeal yesterday for motion hearing and in the light of the valuation report and the royalty suggested by the valuer the matter was kept for today.

2. By the impugned order, the learned motion

Judge granted prayer clause (a) of the notice of motion with power to the Receiver to sell the properties and realise the sale proceeds. The Court Receiver was directed to take steps to take physical possession of the properties from the defendants who are in possession of the properties and thereafter take steps to sell the properties in accordance with law by inviting bids.

3. It appears that in Appeal No.195 of 2003 arising out of the Notice of Motion No.2582 of 2002, the Division Bench by its order dated March 27, 2003 appointed the Court Receiver and the present appellant (respondent therein) was given liberty to apply to the Court Receiver to appoint them as agent on usual terms and conditions including royalty. In its order the Division Bench observed that the claim of the bank against the present appellant exceeds Rs.90 crores and under an English mortgage the security already stood conveyed to the bank. We are informed that the Court Receiver fixed ad-hoc royalty at the rate of Rs.1.25 crores per month and the present appellant was asked to execute the agency agreement. The appellant has not executed any agency agreement yet continues to remain in possession of the subject property without executing agency

agreement and payment of any royalty.

4. As already observed by us in our order passed yesterday i.e. October 25, 2004 that the Court Receiver has received the valuation report of the property as well as the report of royalty suggested by M/s.Nadkarni & Co., Architects & Valuers. The royalty suggested by M/s.Nadkarni & Co. is Rs.1.73 crores per month and the valuation of the property, according to the architects, is about Rs.244 crores. Since the appellant is not desirous nor is in position to pay the royalty fixed on ad-hoc basis much less the royalty suggested by the architects, the impugned order passed by the learned motion Judge directing the Court Receiver to take possession of the subject property from the appellant cannot be faulted.

5. As regards the direction given by the learned motion Judge to the Court Receiver to sell the property, suffice it to observe that according to the valuation report the subject property values about Rs.244 crores and the only offer that has been received by the Court Receiver from one M/s.Dimexon Diamonds Limited is for Rs.61 crores. The question whether the subject property deserves to be sold at

the price offered by M/s.Dimexon Diamonds Limited shall have to be considered by the learned single Judge on the report that may be submitted by the Court Receiver.

6. We, accordingly, direct that the Court Receiver shall make report to the learned Single Judge for appropriate order and direction in the light of the offer received from the prospective buyer and the valuation report.

7. With the aforesaid observation, the appeal is dismissed in limine. The oral prayer for stay is rejected.

(R.M. LODHA, J.)

(J.P. DEVADHAR, J.)